

AO 91 (Rev. 11/11) Criminal Complaint

UNITED STATES DISTRICT COURT

for the

Northern District of New York

UNITED STATES OF AMERICA)

v.)

Case No. 3:18-MJ- 298 (TWD)

JAMES W. O'BRIEN)

Defendant(s)

CRIMINAL COMPLAINT

I, the complainant in this case, state that the following is true to the best of my knowledge and belief. On or about the date(s) of June 2017 to the present in the county of Broome in the Northern District of New York the defendant(s) violated:

Code Section

18 United States Code §2252A(a)(1)

Offense Description

Transportation of child pornography using a means and facility of interstate and foreign commerce, and in and affecting such commerce

18 United States Code 2252A(a)(5)(B)

Possession of child pornography that has been transported using any means of interstate and foreign commerce and in and affecting such commerce

This criminal complaint is based on these facts:
See attached.

☒ Continued on the attached sheet.



Complainant's signature

Jenelle Bringuel, Special Agent

Printed name and title

Sworn to before me and signed in my presence.
ATTESTED TO BY THE COMPLAINANT IN
ACCORDANCE WITH THE REQUIREMENTS OF RULE
4.1 OF THE FEDERAL RULES OF CRIMINAL
PROCEDURE

Date: May 31, 2018



Judge's signature

City and State: Syracuse, New York

Hon. Thérèse Wiley Dancks, U.S. Magistrate Judge

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK**

AFFIDAVIT IN SUPPORT OF CRIMINAL COMPLAINT

I, Jenelle Corrine Bringuel, being duly sworn, depose and state:

INTRODUCTION

1. I have been employed as a Special Agent of the FBI since June 2012 and am currently assigned to the Albany Division, Binghamton Resident Agency. While employed by the FBI, I have investigated federal criminal violations related to cyber crimes and crimes against children. I am currently investigating federal violations concerning child pornography and the sexual exploitation of children. I have gained experience regarding such crimes through training in seminars, classes, and everyday work related to conducting these types of investigations.

2. I am an investigative or law enforcement officer of the United States within the meaning of Title 18 United States Code, Section 2510(7), that is, an officer of the United States who is empowered by law to conduct investigations of and to make arrests for offenses enumerated in Title 18, United States Code, Section 2516(1). As an FBI Special Agent, I am authorized to seek and execute federal arrest and search warrants for Title 18 criminal offenses, including offenses related to the sexual exploitation of minors, specifically those involving the possession, distribution of child pornography in violation of Title 18, United States Code, Section 2252A.

3. This affidavit is made in support of a request for the issuance of a complaint and an arrest warrant for James W. O'Brien. Based upon investigation and the facts provided below, your Affiant submits there is probable cause to believe O'Brien committed federal crimes by knowingly transporting Child Pornography and knowingly possessing Child Pornography, in violation of Title

18, United States Code, Sections 2252A(a)(1) and 2252A(a)(5)(B).

4. The statements contained in this affidavit are based in part on information provided by the New York State Police (NYSP) and on my investigative experience and background as a Special Agent with the FBI. Since this affidavit is being submitted for the limited purpose of establishing probable cause for a complaint and to obtain an arrest warrant, I have not included every fact known to me concerning this investigation. I have set forth only the facts I believe are necessary to establish probable cause to believe that James W. O'Brien violated Title 18, United States Code, Sections 2252A(a)(1) and 2252A(a)(5)(B)

APPLICABLE LAW

5. Title 18, United States Code, Section 2252A entitled "Certain Activities Relating to Material Constituting or Containing Child Pornography", provides that:

I. Title 18, United States Code, Section 2252A(a), states:

Any person who –

(1) knowingly mails, or transports or ships using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce by any means, including by computer, any child pornography;

II. Title 18, United States Code, Section 2252A(a)(5)(B), states:

(Any person who -) knowingly possesses, or knowingly accesses with intent to view, any book, magazine, periodical, film, videotape, computer disk, or any other material that contains an image of child pornography that has been mailed, or shipped or transported using any means or facility of interstate commerce or in or affecting interstate or foreign commerce by any means, including by computer, or that was produced using materials that have been mailed, or shipped or

transported in or affecting interstate or foreign commerce by any means, including by computer;

FACTUAL BACKGROUND

6. On June 26, 2017, the New York State Internet Crimes Against Children (ICAC) Task Force began investigating a cyber tip that the National Center for Missing and Exploited Children (NCMEC) received from Google Inc. about an image depicting child pornography that had been uploaded to Google. The image at issue depicts two prepubescent nude females, between the ages of 8-12 years old, one female is naked and laying on her back with her legs spread apart while the other female is also naked and has her face is positioned directly in front of the other female's exposed vagina. The image titled "368ad951-6496-4533-84a0-c6519700616f.jpg" was uploaded to Google on June 19, 2017 by a user with the e-mail address of budman11n44@gmail.com and an IP address of 66.24.38.198. Further investigation has revealed that this IP address is registered to Time Warner Cable. Google Inc. also provided information that the user name of "James O'Brien" and the mobile number of 607-374-9224 are associated with the budman11n44@gmail.com e-mail account.

7. A second cyber tip that NCMEC received from Google, Inc. showed that the user of budman11n44@gmail.com uploaded the same child pornography image on July 12, 2017 using the same e-mail account and the same IP address.

8. A third cyber tip that NCMEC received from Google, Inc. showed that the user budman11n44@gmail.com using IP address 198.228.205.2 uploaded an image depicting child pornography titled "cd69acd6-0079-4ed7-a9cb-d3fbbf7018de.jpg" on July 19, 2017. The image shows a nude female, both approximately 8-12 years old, laying on her back with her legs spread exposing her vagina. IP address 198.228.205.2 is registered to AT&T Wireless. Further

investigation has revealed that James O'Brien's mobile phone number of 607-374-9224 has been serviced by the carrier, T-Mobile since September 24, 2016. T-Mobile commonly uses AT&T towers to provide service to its wireless customers.

9. On July 28, 2017, ICAC Task Force Members sent subpoena requests for subscriber information to Time Warner Cable for IP address 66.24.38.198, Google for budman11n44@gmail.com, and T-Mobile for cellular telephone number 607-374-9224.

10. On September 12, 2017, Time Warner Cable in response to the above referenced subpoena provided subscriber information for IP address of 66.24.38.198. Specifically, Time Warner Cable records show that the subscriber is James O'Brien who resides at 106 Henry Street, Apartment 110, Binghamton, NY 13901. The e-mail address associated with this account is jobrien5@twc.com and the telephone number listed for the subscriber is 607-374-9224.

11. On October 10, 2017, ICAC Task Force Members received a subpoena response from Google stating that the e-mail address of budman11n44@gmail.com is subscribed to by James W. O'Brien, whose Google account was created on November 15, 2013. Google's response also noted that an e-mail address of jobrien5@twc.com and a telephone number of 607-374-9224 are associated with the account.

12. On November 9, 2017, ICAC Task Force members received a subpoena response from T-Mobile stating that the telephone number 607-374-9224 is subscribed to by James W. O'Brien, of 106 Henry Street, Binghamton, NY 13901.

13. ICAC Task Force members ran the name James W. O'Brien through the New York State Sex Offender Registry which revealed that James W. O'Brien is a convicted level 1 sex offender. A Criminal Records database search shows that O'Brien was convicted in New York State in 2008 of possessing a sexual performance by a child less than 16 years of age, in violation

of New York State Penal Law 263.16.

14. On April 30, 2018, TFO Kresge responded to a Cyber Tip requesting assistance from the Philadelphia Police Department, (Philadelphia, Pennsylvania) Special Victims Unit. TFO Kresge contacted Philadelphia Police Department Detective Peter Marcellino who advised that a 14 year old female residing in Pennsylvania, had had an on-going communication with a subject by the name of James O'Brien using cellular telephone applications called "ICQ" and "Amino". During the victim's communication with O'Brien, she sent him nude photos of herself at his request. Detective Marcellino also advised that the 14 year old victim and O'Brien had exchanged cell phone numbers. The Victim told Detective Marcellino that the cellular telephone numbers O'Brien gave her to contact him were 607-374-9224 and 607-381-0163. As noted above, cellular telephone number 607-374-9224 is subscribed to by James O'Brien.

15. On May 31, 2018, your Affiant along with other FBI agents and FBI Task Force officers, executed a federal search warrant at 106 Henry Street, #110, Binghamton, NY 13901. Your Affiant and TFO Kresge met defendant O'Brien at his residence on that date, and O'Brien voluntarily agreed to accompany TFO Kresge and Investigator Jennifer Hahl to the FBI Binghamton Resident Agency office interview room, located at 15 Henry Street, Binghamton, NY 13901 to be interviewed.

16. The interview of O'Brien was audio and video recorded. O'Brien was provided his Miranda warning and voluntarily agreed to speak with TFO Kresge and Investigator Hahl. During the course of the interview, O'Brien provided that he is in possession of approximately 100 images depicting nude females, approximately 13-14 years old. He also described videos he possessed which depict a female under the age of 12 masturbating. O'Brien was specifically asked about communications with a teenager from Philadelphia, PA. O'Brien stated he was in contact with

what he knew was a 14 year old Asian female who resides in Philadelphia, PA. O'Brien stated that he requested nude pictures of this 14 year old female, which she then sent via a mobile phone application. O'Brien provided that these communications occurred on a black LG cell phone located in his residence, on a desk near his computer.

17. During the execution of the federal search warrant, there were in excess of 20 cellular telephones that were found in O'Brien's residence. When asked why he possessed 20-30 cell phones, O'Brien advised he changed his cell phone every few months to cover his tracks because he knew that the activities he was involved in regarding underage females was illegal in nature. At O'Brien's residence, a black LG cell phone was discovered on O'Brien's desk. Your Affiant conducted a Cellebrite extraction of that device, on which the ICQ mobile phone application was observed. One of the user accounts located on the cell phone was budman11n44@gmail.com. Additionally, several hundred images depicting minors engaged in sexual activity or exhibiting their genitals in a lewd and lascivious manner were observed, three of which are described below, and are available for the court's review upon request:


a. 1452553499280.jpg: This image depicts a nude female, approximately 8 years old, being vaginally penetrated by an adult male penis. Her legs are being forced open by the adult male's hands.

b. 1452553661890.jpg: This image depicts two nude males, approximately 5 years old, laying on a flat surface, pulling their legs back, spreading their legs open, exposing their genitals in a lewd and lascivious manner.

c. 1452553837456.jpg: This image depicts a nude female, approximately 4 years old, laying in a bathtub with her legs spread open, holding her vagina open in a lewd and lascivious manner.

Conclusion

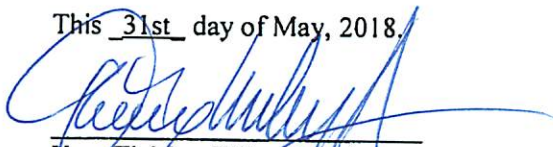
18. Based on the foregoing information, there is probable cause to conclude that James W. O'Brien has knowingly transported child pornography using a means and facility of interstate and foreign commerce, and in and affecting such commerce, in violation of Title 18, United States Code, Section 2252A(a)(1); and has knowingly possessed child pornography that has been transported using any means of interstate and foreign commerce and in and affecting such commerce, in violation of Title 18, United States Code, Section 2252A(a)(5)(B).


Jenelle Corrine Bringuel
Special Agent
Federal Bureau of Investigation

ATTESTED TO BY THE COMPLAINANT IN ACCORDANCE WITH THE REQUIREMENTS
OF RULE 4.1 OF THE FEDERAL RULES OF CRIMINAL PROCEDURE

Sworn to me

This 31st day of May, 2018.


Hon. Thérèse Wiley Dancks
United States Magistrate Judge